

THE EVOLUTION OF PROVINCIAL FINANCE IN BRITISH INDIA

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1 Cf. James Bryce, *The American Commonwealth*, 1910, Vol. I, Chap. XX.

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2 Cf. Sir Sidney Low, *The Governance of England*, 1914, Ch. III, *passim*.

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1 Cf. the important note by that eminent lawyer Sir Bhashyam Iyengar on the Reform proposals of Lord Minto in 1908

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Fisher, H. A. L., on Imperial Administration in his *The Empire and the Future*, 1916, p. 58.

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The only two cases in which the Secretary of State is known to have run counter to the wishes of the Executive in India were those concerning the Punjab Drainage and Canal Act and the Indian Tariff Act of 1875. The latter was obviously detrimental to the interests of India.

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Cf. the Resolutions of the House of Commons in 1877 and 1879 condemning the Indian Tariff policy in the interest of Lancashire

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In support of this may be cited the fact that Parliament never granted a lease of power without making harassing inquiries into the affairs of the East India Company.

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Compare the Parliament which subjected the Indian Executive to the Judicature with the Parliament that has freed that Executive from Judicial and Legislative control. Compare the Parliament which laid stringent regulations on the Europeans in India with the Parliament which not only allowed them free ingress but kept them above the control of the Magistracy. Compare the Parliament which impeached Hastings with the Parliament which supported General Dyer.

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1 Bengal Regulation of 1829 prohibiting *Sati*, Act V of 1843 (prohibiting slavery) : XXI of 1850 (re enacting Sec. of Reg. VII of 1832) prohibiting forfeiture of rights or property as a result of loss of caste or religion ; XV of 1856 authorising the remarriage of Hindu widows ; XXI of 1866 enabling native Converts to Christianity to obtain divorce ; XXVII of 1871 restricting unnatural practices; III of 1872 providing a form of marriage for all persons who are neither Christians, Jews, Hindus, Mahomedans, Jains, nor Sikhs.

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'It was first accepted by Warren Hastings in 1772 and was embodied in the East India Company's Act of 1780 (21 Geo. III, c. 70, ss. 17 and 18); the provisions have been incorporated in later Statutes.

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Cf. the provisions in favour of the personal law in the Indian Succession Act X of 1865 : the Transfer of Property Act IV of 1882, and the Indian Trust Act II of 1882.

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Cf. The Tenancy Acts of 1859, 1868, 1881 and 1885 in Bengal : Oudh Rent Act of 1868 in U.P. : the Deccan Agriculturists Relief Act of 1879 in Bombay, and the Central Provinces Tenancy Act of 1883.

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The Factory Acts did not begin in India till 1881. The Act of 1881 was amended in 1891 and replaced by another in 1911 which lays down the conditions governing factory labour in India.

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Students of Indian economic problems will perceive that the reference is to the scandalous system of indentured labour.

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1 Cf. the speech by Sir A. Colvin on the License Tax Amendment Bill in the Supreme Legislative Council on January 4, 1886.

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Cf. the criticism by Prof. Cannan on the Terms of Reference to the Royal Commission on Local Taxation

in the Memoranda chiefly relating to the classification and incidence of Imperial and Local Taxation, C. 9528 of 1899, p. 160.	
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1 For an illuminating discussion of this, of. A. V. Dicey, <i>Law of the Constitution</i> , 1915, pp. 74-82.	
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1 The poll tax has been continued in Burma simply because it was found to exist there on the day of conquest.	
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2 Benard Houghton, <i>Bureaucratic Government</i>	
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1 Bengal Regulation III of 1818: Bombay Regulation XXV of 1827 ; Madras Regulation II of 1819	
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2 Act XXIV of 1850 and Act III of 1858.	
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N. Ghose, <i>Comparative Administrative Law</i> , 1918, p. 480.	
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4 Act IX of 1857	
3 Page:	1
"Sir Lawrence Jenkins, C. J., <i>in re Mahomedali</i> , I.L.R. 40, Cal. 466 (1913), quoted by N. Ghose, <i>op. cit.</i> , p. 567.	
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1 Sections 108 and 144 of the Criminal Procedure Code and Sections 120A and B, 124A and 153A of the Indian Penal Code	
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2 N. Ghose, <i>op. cit.</i> , p. 601.	
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3 Code of Criminal Procedure Act V of 1898, Ch. IX, Sections 128, 130 and 132.	
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4 <i>Ibid.</i> , sect. 197	
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5 Speech on conciliation with America.	
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1 Up to 1833 the Executive was also the Legislature. In 1833 a law member was added to the Executive Council, whose duties were confined to merely giving assistance to the Executive Council in the matter of making laws. By the Act of 1853 he was merged into the Executive Council.	
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2 16 and 17 Victoria, c. 95.	
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3 24 and 25 Victoria, c. 67.	
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4 By the Act of 1853 the Supreme Legislature was composed of nominated members comprising two Judges of the High Court of Bengal and four nominated officials representative of the Bengal, Madras, Bombay and N.W.P. governments in addition to the members of the Executive Council of the Government of India.	
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It was Lord Morley, of world-wide fame as a champion of Liberalism by supporting the cause of Irish Home Rule, who said in introducing the political reforms in India : " If I knew that my days, either official or corporeal, were twenty times longer than they are likely to be, I should be sorry to set out for the goal of a Parliamentary system in India. The Parliamentary system in India is not the goal to which I for one moment aspire."	
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It was, however, a system of selection. The only difference between the Act of 1861 and the Act of 1892 was that under the former Act the Executive Government was to nominate anyone it liked to the Legislature. Under the latter the Executive Government was to nominate " upon the advice of such	

sections of the community as are likely to be capable of assisting in that matter." But as the Government was not bound to appoint the person selected, the second, howsoever concealed, must really be regarded a case of nomination by the Executive as much as the first.

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3 Legally the President of the Council, i.e. the Viceroy; but he is supposed to be invariably acting on the advice of the executive Council

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4 Cf. J. Redlich, *Parliamentary Procedure*, Vol. III, p. 198.

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1 This will be found in East India Constitutional Reforms, pp. Cd. 9178 of 1918, p. 98.

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1 Report of the Joint Select Committee on the Government of India Bill, p. 203 of 1919, p.s. para. 7.

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Report on Indian Constitutional Reforms, Cd. 9109 of 1918, Ch. V.

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There is, however, a glaring exception. The land revenue in India has been raised without any legislative sanction. The exclusion of land revenue from the province of the legislature practically removed between 40 and 50 per cent. of the net public revenue from any sort of control.

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The degree of subordination it should be noted varied with the status of the Provinces, for which see Joint Report, pp. 37-45.

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Joint Report, pp. 75-6.

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3 Joint Report, p. 101.

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Memorandum for the Functions Committee by the Government of India, Annexure II to the Report of the Committee Cmd. 103 of 1919.

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Report, pp. 165-7.

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The land revenue policy of the Government has always been looked upon by the popular leaders, rightly or wrongly, with a certain degree of suspicion, and is always in danger of being attacked. For fear that the policy may be subverted under a popular Provincial Legislature to whose control land revenue as a provincial subject was subjected it provided by the Reservation of Bills Rules under Section 12(1) of the Government of India Act, 1919, that—The Governor of any Governor's province *shall* reserve for the consideration of the Governor-General any Bill, not having been previously sanctioned by the Governor-General, which has been passed by the legislative Council of the Province and is presented to the Governor for his assent, if the Bill appears to the Governor to contain provisions—

(e) affecting the land revenue of a Province either so as to (i) prescribe a period or periods within which any temporary settled estate or estates may not be re-assessed to land revenue, or (ii) limit the extent to which the assessment to land revenue of such an estate or estates may be made or enhanced, or

(iii) modify materially the general principles upon which land revenue has hitherto been assessed, if such prescription, limitation or modification appears to the Governor to be likely seriously to affect the public revenues of the province.

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1 Report, p. 168

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Report, p. 169.

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The suggested imposition of an equal rate of levy is somewhat strange, for the authors of the Report had in para. 206 protested that "equality of contribution was impracticable," etc. Para. 206 of the Joint Report makes a confusion. It protests against equality of contributions, which is what it adopts in the plan it recommends.

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1 Report, p. 170.

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Dated March 5, 1919 (para. 61), on the questions raised in the Report on Indian Constitutional Reforms, pp. Cmd. 123 of 1919.

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Report of the Joint Select Committee on the Government of India Bill (part V, clause 41, para. 9)—House of Commons Return 203 of 1919, p. 12.

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Report of the Committee appointed by the Secretary of State for India to advise on the question of the Financial Relations between the Central and Provincial Governments in India, pp. Cmd. 724 of 1919, Ch. III.

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The Report of the Financial Relations Committee seems to argue that the difference between its plan of levying contributions and that suggested in the Joint Report is a difference in the *basis* of the contributions ; its basis being that of " increased spending power," while that of the Joint Report was " gross provincial surplus." The Financial Relations Committee pointedly criticised the method proposed in the Joint Report to assess the contribution from each province " as a percentage of difference between the gross provincial revenue and the gross provincial expenditure." There does not seem to be much difference between that scheme and the scheme of the Committee consisting of a percentage levy on what is called increased spending power of the provinces under the new distribution of the revenues between the Central and Provincial Governments. That these two are different bases of assessment seems to be the general impression (of. the speech of the Hon. Rai Bahadur Bakshi Sohan Lal on the Resolution *re* Provincial Contributions to the Central Exchequer, Legislative Assembly Debates, Vol. III, No. 8, p. 508). This of course is an error , for spending power is simply another name for gross surplus. The change made by the Committee was in proposing unequal contribution in place of equal contribution. It kept unchanged the basis of the assessment.

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Recommendations of the Government of India regarding the Demarcation between Central and Provincial Revenues, Cmd. 334 of 1919, Statement III.

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These adjustments were, with regard to the Military Police Force in Burma, the payment of pensions and leave allowances. of. Report of the Financial Relations Committee, para. 10.

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For a good piece of criticism of the basis *adopted* by the Financial Relations Committee in arriving at the standard ratio, see para. 12 of a rather splenetic letter from Rai Bahadur K. V. Raddi to the Reforms Commissioner, Simla, pp. Cmd. 974 of 1920, p. 58.

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Second Report of the Joint Committee appointed to revise the draft rules made under the Government of India Act, pp. 172 of 1920, pp. 2-3.

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This arrangement was subject to the following provision attached to Devolution Rule 15:

(2) In consideration of this allocation, each Local Government shall make to the Governor-General in Council a fixed annual assignment of a sum to be determined by the Governor-General in Council as the equivalent of the amount which would have accrued to the Local Government in the year 1920-21 (after deducting the provincial share of the cost of special income tax establishments in that year) had the pie-rate fixed under sub-rule (1) been applied in that year, due allowance being made for any abnormal delays in the collection of tax.

(1) The cost of special income tax establishments employed within a province shall be borne by the Local Government and the Governor-General in Council in the proportions of 25 per cent. and 75 per cent. respectively.

(4) If in any financial year the total amount payable by a Local Government under sub-rules (2) and (3) in respect of the fixed assignment and the cost of special income tax establishments exceeds the amount of the share of income tax allocated to it under sub-rule (1), the fixed assignment for that year shall be deemed to have been reduced by the amount of such excess.

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Devolution Rule 24.

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Rules under Section 2 (2) of the Government of India Act, 1919

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The rules required that :

(1) No loan shall be raised by a Local Government without the sanction (in the case of loans to be raised in India) of the Governor-General in Council, or (in the case of loans to be raised outside India) of the Secretary of State in Council, and in sanctioning the raising of a loan the Governor-General in Council or the Secretary of State in Council, as the case may be, may specify the amount of the issue and any or all of the conditions under which the loan shall be raised.

(2) Every application for the sanction of Secretary of State..... shall be transmitted through the Governor-General in Council.

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Rules under Section 10 (3) (a) of the Government of India Act, 1919, Scheduled Taxes Rules.

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Rules under section 10 (3) (L) of the Government of India Act, 1919, Local Legislature Previous Sanction rules. It should, however, be noted that if a Provincial Bill is such that it does not require previous sanction it does not follow that it can become law under the above rules because it has been assented to by the Provincial Legislation. For, by virtue of another set of Rules' made under section 12 (1) of the Government of India Act, 1919, called Reservation of Bills Rules, it is provided that the Governor of a Province *must* reserve some and may reserve other Bills for the subsequent assent of the Governor-General before declaring them law even if the Bills be such as to require no previous sanction

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For the constitution and functions of the Finance Department of the Provinces, see Part III of Devolution rules made under Section I of the Government of India Act, 1919.

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See Rules 25 to 32 of the Rules of Business for Provincial Legislative Councils made under Section 1 1 (5) of the Government of India Act, 1919. 4

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Rules framed under Section 96D (1) of the Government of India Act.